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Administration of justice at the United Nations

Report of the Fifth Committee

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I. Introduction

1. At its 2nd plenary meeting, on 21 September 2012, the General Assembly, on the recommendation of the General Committee, decided to include in the agenda of its sixty-seventh session the item entitled "Administration of justice at the United Nations" and to allocate it to the Fifth Committee.

2. The Fifth Committee considered the item at its 12th and 22nd meetings, on 5 November and 24 December 2012. Statements and observations made in the course of the Committee's consideration of the item are reflected in the relevant summary records (A/C.5/67/SR.12 and 22).

3. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Secretary-General on administration of justice at the United Nations (A/67/265 and Corr.1);

(b) Report of the Secretary-General on the amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal (A/67/349);

(c) Report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services (A/67/172);

(d) Report of the Internal Justice Council on administration of justice at the United Nations (A/67/98);

(e) Related report of the Advisory Committee on Administrative and Budgetary Questions (A/67/547);

(f) Letter dated 10 October 2012 from the Secretary-General to the President of the General Assembly (A/67/538);

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(g) Letter dated 23 October 2012 from the President of the General Assembly to the Chair of the Fifth Committee (A/C.5/67/9).

II. Consideration of draft resolution A/C.5/67/L.11

4. At its 22nd meeting, on 24 December 2012, the Committee had before it a draft resolution entitled "Administration of justice at the United Nations" (A/C.5/67/L.11), submitted by the Chair of the Committee on the basis of informal consultations coordinated by the representative of Canada.

5. At the same meeting, the Committee adopted draft resolution A/C.5/67/L.11 without a vote (see para. 6).

III. Recommendation of the Fifth Committee

6. The Fifth Committee recommends to the General Assembly the adoption of the following draft resolution:

Administration of justice at the United Nations

The General Assembly,

Recalling section XI of its resolution 55/258 of 14 June 2001, its resolutions 57/307 of 15 April 2003, 59/266 of 23 December 2004, 59/283 of 13 April 2005, 61/261 of 4 April 2007, 62/228 of 22 December 2007, 63/253 of 24 December 2008, 64/233 of 22 December 2009, 65/251 of 24 December 2010 and 66/237 of 24 December 2011, as well as its decisions 63/531 of 11 December 2008 and 65/513 of 11 December 2010,

Having considered the reports of the Secretary-General on administration of justice at the United Nations,[1] on amendments to the rules of procedure of the United Nations Dispute Tribunal[2] and the United Nations Appeals Tribunal and on the activities of the Office of the United Nations Ombudsman and Mediation Services,[3] the report of the Internal Justice Council on the administration of justice at the United Nations,[4] the letter dated 23 October 2012 from the President of the General Assembly to the Chair of the Fifth Committee,[5] the letter dated 10 October 2012 from the Secretary-General to the President of the General Assembly[6] and the related report of the Advisory Committee on Administrative and Budgetary Questions,[7]

1. *Takes note* of the reports of the Secretary-General on the administration of justice at the United Nations,[1] on amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal[2] and on the activities of the Office of the United Nations Ombudsman and Mediation Services;[3]

2. *Endorses* the conclusions and recommendations contained in the report of the Advisory Committee on Administrative and Budgetary Questions,[7] subject to the provisions of the present resolution;

I
System of administration of justice

3. *Recalls* section I, paragraph 5, of its resolution 53/221 of 7 April 1999, in which it underlined its full respect for the prerogatives and responsibilities of the Secretary-General under the Charter of the United Nations, and reaffirms that the

[1] A/67/265 and Corr.1.
[2] A/67/349.
[3] A/67/172.
[4] A/67/98.
[5] A/C.5/67/9.
[6] A/67/538.
[7] A/67/547.

resolutions of the General Assembly and the decisions of the International Civil Service Commission are binding on the Secretary-General and on the Organization;

4. *Recalls* paragraph 6 of its resolution 66/237 and paragraph 9 of its resolution 65/251, and stresses that all elements of the system of administration of justice must work in accordance with the Charter of the United Nations and the legal and regulatory framework approved by the General Assembly;

5. *Reaffirms* that, in accordance with paragraph 28 of resolution 63/253, the United Nations Dispute Tribunal and the United Nations Appeals Tribunal shall not have any powers beyond those conferred under their respective statutes;[8]

6. *Emphasizes* that the decisions of the General Assembly related to administrative and budgetary matters are subject to review by the General Assembly alone;

7. *Reaffirms* that recourse to general principles of law and the Charter by the Tribunals is to take place within the context of and consistent with their statutes and the relevant General Assembly resolutions, regulations, rules and administrative issuances;

8. *Notes* that some decisions taken by the Tribunals may have contradicted the provisions of the General Assembly resolutions on human resources management-related issues;

9. *Reaffirms* its decision, contained in paragraph 4 of resolution 61/261, to establish a new, independent, transparent, professionalized, adequately resourced and decentralized system of administration of justice consistent with the relevant rules of international law and the principles of the rule of law and due process to ensure respect for the rights and obligations of staff members and the accountability of managers and staff members alike;

10. *Notes with appreciation* the achievements produced since the inception of the new system of administration of justice, regarding both the disposal of the backlog and the addressing of new cases;

11. *Acknowledges* the evolving nature of the new system of administration of justice and the need to carefully monitor its implementation to ensure that it remains within the parameters set out by the General Assembly;

12. *Emphasizes* the importance of the principle of judicial independence in the system of administration of justice;

13. *Recalls* paragraph 36 of the report of the Advisory Committee on Administrative and Budgetary Questions,[7] reiterates its request to the Secretary General to make every effort to institutionalize good management practices in order to address the underlying factors that give rise to disputes in the workplace and to report thereon to the Assembly at its sixty-eighth session;

14. *Stresses* the importance of ensuring access for all staff members to the new system of administration of justice, regardless of their duty station;

15. *Invites* all who are involved in the implementation and functioning of the system of administration of justice, including managers and staff members, to

[8] Resolution 63/253, annexes I and II, respectively.

contribute to strengthening the system of administration of justice, aiming to ensure that the system has a positive impact on staff-management relations and improves the performance of both staff and managers;

16. *Notes with concern* that performance management is highlighted as the single most important cross-cutting issue in the report on the activities of the Office of the United Nations Ombudsman and Mediation Services;[3]

17. *Recognizes* that sound performance management can greatly contribute to avoiding conflict in the workplace, and requests the Secretary-General to redouble his efforts to continue to develop and implement a credible, fair and fully functioning performance appraisal system;

18. *Recalls* paragraph 14 of its resolution 66/237, and requests the Secretary-General to submit to the General Assembly, for consideration at the main part of its sixty-eighth session, an updated report on issues relevant to its review of the statutes of the Tribunals;[8]

19. *Recalls* paragraph 12 of the report of the Advisory Committee on Administrative and Budgetary Questions,[7] and requests the Secretary-General to submit for consideration by the General Assembly at its sixty-eighth session a proposal for conducting an interim independent assessment of the formal system of administration of justice;

20. *Decides* that the assessment requested in paragraph 19 above should be conducted in a cost-efficient manner and within existing resources;

II
Informal system

21. *Recognizes* that the informal system of administration of justice is an efficient and effective option for staff who seek redress of grievances and for managers to participate in;

22. *Reaffirms* that the informal resolution of conflict is a crucial element of the system of administration of justice, emphasizes that all possible use should be made of the informal system in order to avoid unnecessary litigation, and in this regard requests the Secretary-General to recommend to the General Assembly at its sixty-eighth session additional measures to encourage recourse to informal resolution of disputes and to avoid unnecessary litigation;

23. *Encourages* the Secretary-General to ensure that management responds to requests of the Ombudsmen and Mediation Services in a timely manner;

24. *Stresses* the importance of developing a culture of dialogue and amicable resolution of disputes through the informal system, and requests the Secretary-General to propose measures to encourage informal dispute resolution at the main part of the sixty-eighth session of the General Assembly;

25. *Recalls* paragraph 153 of the report of the Secretary-General on the activities of the Office of the United Nations Ombudsman and Mediation Services,[3] and requests the Secretary-General to take concrete measures to address the current organizational culture whereby there is a tendency to shift responsibility for the resolution of conflict upwards in the organizational hierarchy;

26. *Welcomes* the recommendations made in the report on the activities of the Office of the United Nations Ombudsman and Mediation Services to address systemic and cross-cutting issues, and requests the Secretary-General to report to the General Assembly at the main part of its sixty-eighth session on progress made on the implementation of the recommendations contained in the report;

27. *Reiterates* its requests, contained in paragraph 67 (a) of resolution 62/228, paragraph 21 of resolution 63/253, paragraphs 16 to 18 of resolution 65/251 and paragraph 19 of resolution 66/237, to the Secretary-General to report to it on the revised terms of reference for the Office of the United Nations Ombudsman and Mediation Services, and requests the Secretary-General to ensure that the terms of reference and guidelines for the Office are promulgated as soon as possible;

28. *Recalls* paragraph 18 of its resolution 66/237 regarding the establishment of a single integrated and decentralized Office of the Ombudsman for the United Nations Secretariat, funds and programmes, and acknowledges that progress has been made in this regard;

29. *Recalls* paragraph 20 of resolution 66/237, welcomes the information provided informally by the Office of the United Nations Ombudsman and Mediation Services on the financial and administrative implications resulting from settlements reached through informal dispute resolution, and requests the Office to provide to the General Assembly at its sixty-eighth session another informal briefing on such implications;

30. *Recognizes* the positive impact of the establishment of the seven regional offices of the United Nations Ombudsman and Mediation Services, in Bangkok, Geneva, Nairobi, Santiago, Vienna, the peacekeeping mission in the Democratic Republic of the Congo and the Regional Service Centre in Entebbe, Uganda;

III
Formal system

31. *Recognizes* the roles of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;

32. *Recalls* article 7 of the statute of the Dispute Tribunal and article 6 of the statute of the Appeals Tribunal,[8] and encourages the Tribunals to continue to expand, as appropriate, their practice of consultation in the process for developing amendments to their rules of procedure;

33. *Requests* that the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal[2] be amended accordingly whenever a decision of the Assembly entails a change in the rules of procedure;

34. *Recalls* paragraph 35 of its resolution 66/237, and notes that corresponding changes in the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal have not yet been made;

35. *Approves* the amendments to article 9 of the rules of procedure of the United Nations Appeals Tribunal as proposed in annex II to the report of the Secretary-General on amendments to the rules of procedure of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal;[2]

36. *Welcomes* the issuance and dissemination of lessons learned guides arising from the judgements of the Tribunals;

37. . *Notes* the increasing number of cases proceeding to formal adjudication;

38. *Also notes* that the authority of judges and the applicability of their judgements derive from decisions of the General Assembly, including the statute of the United Nations Dispute Tribunal and the statute of the United Nations Appeals Tribunal;[8]

39. *Recalls* its decision in paragraphs 30 and 31 of its resolution 63/253 that the conditions of service of the judges of the United Nations Dispute Tribunal and the United Nations Appeals Tribunal be treated separately from the conditions of service of other judicial appointments in the United Nations system;

40. *Emphasizes* the importance of recruiting the candidates best able to shape the United Nations Appeals Tribunal as a pillar of judicial excellence, and invites the Internal Justice Council, with reference to the recommendation in paragraph 35 of its report,[4] to specify its recommendations on the stipulated qualifications for the Appeals Tribunal judges;

41. *Recalls* paragraph 52 of the report of the Advisory Committee on Administrative and Budgetary Questions,[7] and decides to approve the mechanism for addressing possible misconduct of judges proposed by the Secretary-General in section B of annex VII to his report;[1]

42. *Recognizes* the importance of effective measures against the filing of frivolous applications, encourages the judges to make full use of those measures currently available to them, and invites the Internal Justice Council to provide its views on appropriate options in this regard;

43. *Takes note* of paragraph 18 of the report of Advisory Committee on Administrative and Budgetary Questions,[7] and decides to consider the request for an additional Legal Officer position at the P-3 level in the Management Evaluation Unit in the context of the proposed budget for the support account for peacekeeping operations at the second part of its resumed sixty-seventh session;

44. *Stresses* the need to ensure that all individuals acting as legal representatives, whether staff members or external counsel, are subject to the same standards of professional conduct applicable in the United Nations system, and requests the Secretary-General, in consultation with the Internal Justice Council and other relevant bodies, to prepare a code of conduct for legal representatives who are external individuals and not staff members, and to report thereon to the General Assembly at the main part of its sixty-eighth session;

45. *Decides* to consider the continued requirement for the P-3 Legal Officer position in the Office of Staff Legal Assistance in Nairobi in the context of its consideration of the support account for peacekeeping operations at the second part of its resumed sixty-seventh session;

46. *Welcomes* the positive contributions of the Office of Staff Legal Assistance to the system of the administration of justice, and decides to revert at its sixty-eighth session to the mandate and functioning of the Office;

47. *Decides* that the overall level of resources for the Office of Staff Legal Assistance shall be maintained at its current level until the General Assembly takes a decision regarding a staff-funded scheme;

48. *Notes* that the report of the Secretary-General[1] contains a number of joint financing options for the Office of Staff Legal Assistance by the Organization and the staff, and in this regard, requests the Secretary-General, when submitting a single preferred proposal for consideration and approval by the General Assembly, at the main part of its sixty-eighth session, to do so in consultation with all relevant stakeholders, including the Internal Justice Council and staff representatives;

49. *Recalls* paragraph 34 of its resolution 66/237, paragraph 46 of the report of the Advisory Committee,[7] article 10.7 of the statute of the United Nations Dispute Tribunal and article 9.3 of the statute of the United Nations Appeals Tribunal,[8] and in this regard requests the Secretary-General to continue to solicit responses to facilitate the submission of further information to the General Assembly for its consideration at the main part of its sixty-eighth session on the practice of tribunals in other international organizations and in Member States regarding awards for moral damages, emotional distress, procedural irregularities and violations of due process;

50. *Notes* the importance of ensuring that all categories of personnel have access to recourse mechanisms through which to resolve disputes;

51. *Takes note* of the proposed expedited arbitration procedures developed by the Secretary-General for consultants and individual contractors,[9] and decides to remain seized of the matter;

52. *Requests* the Secretary-General to continue to include information on disputes involving non-staff personnel in the context of both management evaluation and informal mediation in his respective reports and to provide information also on existing measures to institutionalize good management practice that aim to avoid or mitigate disputes involving the different categories of non-staff personnel;

IV
Financial implications and cost-sharing arrangements

53. *Expresses concern* that the agreement on a cost-sharing arrangement for the totality of the internal justice system has not yet been finalized and that the full amount of reimbursement has not yet been received by the participating entities;

54. *Recalls* paragraph 43 of its resolution 66/237, and requests the Secretary-General to make every effort to expedite the finalization of agreements on cost-sharing arrangemen‘s for the totality of the internal justice system, including on the expected reimbursement of approximately 4.5 million United States dollars from the participating United Nations entities, and to report thereon to the General Assembly at the main part of its sixty-eighth session;

V
Other issues

55. *Recalls* paragraph 8 of its resolution 61/261 and paragraph 37 of the report of the Advisory Committee on Administrative and Budgetary Questions,[7] and requests the Secretary-General to submit to the General Assembly at the main part of its sixty-eighth session proposals with reference to accountability of individuals

[9] A/67/265 and Corr.1, annex IV.

where violations of the rules and procedures of the Organization have led to financial loss;

56. *Notes with concern* the delays in selecting new members of the Internal Justice Council, notes that the lack of a functioning Internal Justice Council jeopardizes the control mechanisms of the formal part of the system of administration of justice, requests the Secretary-General to keep the General Assembly apprised of progress in appointing members to fill the remaining vacancies on the Council, and requests the Internal Justice Council to provide recommendations and to report on lessons learned drawn from this situation;

57. *Recalls* paragraph 45 of its resolution 66/237, stresses that the Internal Justice Council can help to ensure independence, professionalism and accountability in the system of administration of justice, and requests the Secretary-General to entrust the Council with including the views of both the Dispute Tribunal and the Appeals Tribunal in its annual reports;

58. *Requests* the Secretary-General to provide the reports requested in paragraphs 13, 18, 19, 44, 48, 49, 54 and 55 of the present resolution in a single comprehensive report on administration of justice to be submitted to the General Assembly at the main part of its sixty-eighth session;

59. *Invites* the Sixth Committee to consider the legal aspects of the comprehensive report to be submitted by the Secretary-General, without prejudice to the role of the Fifth Committee as the Main Committee entrusted with responsibility for administrative and budgetary matters;

60. *Reaffirms* the need for fully equipped courtrooms and other administrative requirements for the Tribunals, and requests the Secretary-General to ensure the provision of functional courtrooms with adequate facilities as a matter of urgency.